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June 1, 1999

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**BY HAND DELIVERY**

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

RECEIVED  
JUN 01 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: Reply to Opposition to Petition for Reconsideration  
of GE American Communications, Inc., MM Docket 93-25  
Implementation of Section 25 of the Cable Television  
Consumer and Competition Act of 1992: Direct Broadcast  
Satellite Public Interest Obligations**

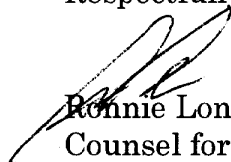
Dear Ms. Salas:

On behalf of GE American Communications, Inc. ("GE Americom"), please find an original and four (4) copies of a Reply to Opposition to Petition for Reconsideration in the above-referenced proceeding. GE Americom's Reply responds to the oppositions to GE Americom's Petition for Reconsideration in this matter, which seeks reconsideration of that portion of the Commission's Report and Order implementing Section 335(b)(5)(A)(ii) of the Communications Act of 1934, as amended, 47 U.S.C. § 335(b)(5)(A)(ii), wherein the Commission determined that the public interest obligations imposed upon Direct Broadcast Satellite ("DBS") providers shall be borne by Part 25 fixed satellite service ("FSS") licensees directly rather than their programmer customers.

Please contact the undersigned directly if you have any questions.

Thank you.

Respectfully submitted,

  
Ronnie London  
Counsel for GE American  
Communications, Inc.

Enclosures

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BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of Section 25 of the )  
Cable Television Consumer )  
and Competition Act of 1992, )  
Direct Broadcast Satellite )  
Service Obligations )  
 )  
Direct Broadcast Satellite )  
Public Interest Obligations )

MM Docket No. 93-25

To: The Commission

**REPLY TO OPPOSITION TO  
PETITION FOR RECONSIDERATION**

GE American Communications, Inc. ("GE Americom"), by its attorneys and pursuant to Section 1.429(g) of the Commission's rules, 1/ hereby replies to the oppositions and responses to its petition for partial reconsideration of the Commission's *Report and Order* 2/ in the above-captioned proceeding. 3/

**INTRODUCTION**

The large majority of filings in this proceeding do not challenge GE Americom's showing that the Communications Act's DBS public service obligations

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1/ 47 C.F.R. § 1429(g).

2/ *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992: Direct Broadcast Satellite Public Interest Obligations*, MM Docket No. 93-25, 13 FCC Rcd 23254 (1998) ("*Report and Order*" or "*Order*").

3/ See Petition for Partial Reconsideration of GE American Communications, Inc. (filed March 10, 1999) ("GE Americom Petition").

are meant to apply to direct-to-home (“DTH”) programmers who lease capacity from fixed satellite service (“FSS”) licensees, and not to FSS licensees themselves. Only two filings even address the substance of our petition for reconsideration, and they do so in only the most conclusory manner, offering nothing that even approaches a substantive rebuttal of GE Americom’s position. 4/ The Commission clearly should grant our petition, as well as the similar petitions filed by two other FSS operators, Loral Space and Communications Ltd. (“Loral”) and PanAmSat Corporation (“PanAmSat”). 5/

## DISCUSSION

GE Americom’s Petition for Reconsideration demonstrated that imposition of DBS public interest programming obligations on FSS licensees violates the literal terms of Section 335 of the Communications Act. 6/ The *Order* disregards the Act’s express objective of putting all DTH multi-channel video programming distribution (“MVPD”) services on the same footing, irrespective of the Ku-band satellite spectrum involved. The Act directly reaches both DBS

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4/ Opposition to and Response to Petitions for Reconsideration of DAETC and CME, *et al.*, at 20 (“DAETC/CME Response”); Opposition of the Association of America’s Public Television Stations and the Public Broadcasting Service to Petitions for Reconsideration and Clarification at 2 (“Public Television Opposition”).

5/ Petition for Reconsideration and Clarification of Loral Space and Communications Ltd. (“Loral Petition”); Petition for Reconsideration of PanAmSat Corporation (“PanAmSat Petition”).

6/ 47 U.S.C. § 335.

licensees who are MVPD providers by definition, and MVPD “distributors” using FSS space segment obtained from a non-MVPD satellite operator.

Even the *Order* effectively recognizes that FSS licensees themselves are in no position to meet the DBS public interest obligations, for they provide no programming. The *Order* nevertheless suggests that FSS operators somehow can pass the burden on contractually to their customers. <sup>7/</sup> In doing so, the Commission evidences a misunderstanding of practical constraints in this area, such as those arising when a MVPD provider obtains satellite capacity on a resale basis with no contract with the operator, or issues arising from long-term satellite capacity leases that pre-date the *Order*. More fundamentally, the Act itself does not envision FSS operators in this “enforcer” role, with their licenses in jeopardy if MVPD companies using their facilities do not comply with the Commission’s rules. Rather, the Act gave the Commission all the jurisdiction it needed to reach non-licensee MVPD services directly for this limited purpose.

GE Americom’s interpretation of Section 335 is supported by the petitions for reconsideration filed by Loral and PanAmSat. Loral notes that the Commission’s rule “inexplicably omits the statutory requirement that the DBS provider be the distributor that controls the video programming channels.”<sup>8/</sup> PanAmSat makes an equally compelling showing that this is the proper

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<sup>7/</sup> See *Order* at 23264-65, ¶¶ 25-26.

<sup>8/</sup> Loral Petition at 5.

interpretation of the Act. 9/ In addition, like GE Americom, Loral demonstrates that the Commission has sufficient jurisdiction to enforce Section 335's public interest obligations directly over the DTH customers of FSS licensees, rather than indirectly through FSS operators. 10/

Again, most parties here do not challenge this interpretation of the Act; only two filings oppose reconsideration on this point. Furthermore, even the DAETC/CME Response recognizes that the Commission has ample jurisdiction to reach FSS customers. 11/ That pleading systematically steps through a jurisdictional analysis in a way that makes it patently clear the Commission may reach FSS customers engaged in DTH operations. 12/

The DAETC/CME Response also recognizes the efficacy of the FCC imposing the public interest obligations on FSS customers. 13/ As DAETC/CME notes, "the Commission should interpret Section 335 in a manner which imposes public interest obligations on DTH providers directly because *they are the parties who control programming[.]*" 14/ DAETC/CME go on to cogently acknowledge:

[I]mposing responsibility for public interest obligations on DTH providers may be the most effective method for enforcement[, as] the DTH providers,

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9/ PanAmSat Petition at 3-5.

10/ Loral Petition at 8.

11/ DAETC/CME Response at 17-20.

12/ *Id.*

13/ *Id.* at 21-23.

14/ *Id.* at 21 (emphasis added).

*and not the satellite companies, have control over the content of the programs aired on DBS. 15/*

GE Americom agrees -- it is this very paradigm that GE Americom stressed in its Petition for Reconsideration.

It is something of a mystery, then, that the DAETC/CME Response, and the conclusory statements in the Public Television Opposition, still support imposing programming obligations on Part 25 licensees. They fail to recognize that their practical rationale for reaching FSS MVPD services also supports the only interpretation of the statute that makes sense, 16/ i.e., that the public interest obligations were meant to be imposed solely on MVPD users of FSS satellites -- and not on the Part 25 licensees themselves. As we demonstrated in our Petition for Reconsideration, the recognition that the Commission's jurisdiction extends to non-licensee DTH providers goes hand-in-hand with both the structure of the DBS industry, and the proper interpretation of the Act.

Neither the DAETC/CME Response nor the Public Television Opposition come to grips with the plain language of Section 335 on this point. That provision expressly imposes programming obligations on "providers of direct broadcast satellite services," relying upon the common-sense distinction between "providers" actively engaged in the business of assembling packages of video channels and marketing them to end users, and spacecraft "operators" who have

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15/ *Id.* at 22 (emphasis added).

16/ *Id.* at 20; Public Television Opposition at 2.

nothing to do with the programming business. The Act thus provides a foundation for imposing public interest requirements on all DTH programmers -- the primary objective sought by both the DAETC/CME and Public Television filings. But the Act does not make FSS operators part of the enforcement process for these obligations.

In short, the record here clearly demonstrates that the Commission should correct on reconsideration its misreading of Section 335(b)(5)(A)'s definition of DBS "providers" subject to the public service obligations. Subsection (A)(i) of that section reaches Part 100 DBS "licensees." This makes sense because Part 100 licensees are expressly authorized to provide DTH programming. Conversely, subsection (A)(ii) reaches "distributors" of DTH programming who use Ku-band FSS satellites. 17/ This also makes sense because Congress was aware that one such distributor competed directly in the marketplace with DBS licensees, and others might do so in the future. 18/ In enacting Section 335, Congress was trying to place all the players in the DBS market on equal footing. The *Order* upsets this statutory scheme.

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17/ As discussed in more detail in our Petition, the Act clearly provides that for the public interest obligations to be imposed, the entity upon whom they are imposed must at least be (1) a "distributor," (2) who "controls a minimum number of channels," (3) "using" those channels "for the provision of video programming directly to the home." See GE Americom Petition at 8.

18/ *Accord*, Loral Petition at 9.

## CONCLUSION

For the foregoing reasons, GE Americom respectfully requests that the Commission reconsider its interpretation of Section 335(b)(5)(A)(ii) and modify its regulations to place Section 335's public interest obligations where they belong -- on the DTH video programming distributors whose decision to participate in that market triggers the Section 335 obligations.

Respectfully submitted,

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